

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

LINDA SANDERS, on behalf of herself and all others similarly situated,

Plaintiff,

RBS CITIZENS, N.A.,

Defendant.

Case No. 13-cv-03136-BAS-RBB

ORDER GRANTING JOINT MOTION FOR APPROVAL OF CY PRES BENEFICIARIES OF RESIDUAL SETTLEMENT FUNDS

(ECF No. 123)

Before the Court is the parties' Joint Motion for Approval of *Cy Pres* Beneficiaries of Residual Settlement Funds ("Joint Motion"). (ECF No. 123.) For the foregoing reasons, the Court **GRANTS** the Joint Motion.

I. BACKGROUND

Plaintiff Linda Sanders brought this action on behalf of a class under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 *et seq.*, on December 20, 2013. (ECF No. 1.) The parties ultimately reached a settlement, which establishes in relevant part that “[a]ny funds not paid out as the result of uncashed settlement checks shall be paid out as a *cy pres* award, to a recipient agreed to by the parties and approved by the Court.” (Settlement Agreement § 11.02, ECF No. 104-3.) The agreement also states that on the final distribution date, or 210 days after the date which the last check for an award was issued, the Claims Administrator will pay the remaining amount in the Settlement Fund to

1 one or more *cy pres* recipients. (*Id.* § 8.05(f).) The Court granted preliminary approval of
 2 the settlement on July 1, 2016 and final approval on January 27, 2017. (ECF Nos. 107,
 3 117.)

4 Now before the Court is the parties' Joint Motion designating *cy pres* beneficiaries.
 5 The parties state that the claims administrator has issued 40,661 settlement checks to
 6 facilitate disbursement of the funds, of which 37,650 were cashed. (Decl. of Alex Thomas
 7 ¶ 2, ECF No. 123-2.) The 3,011 remaining were not cashed within 180 days or have been
 8 voided, leaving \$164,065.89 remaining for *cy pres* distribution. (*Id.*) The parties have
 9 agreed to two *cy pres* beneficiaries, one chosen by Plaintiff's counsel and one chosen by
 10 Defendant's counsel: (1) the University of Santa Clara Law School's ("SCU") Privacy Law
 11 Certificate and High Tech Law Institute; and (2) the Local Initiatives Support Corporation
 12 ("LISC"). (Decl. of Douglas J. Campion ¶ 4, ECF No. 123-3.)

13 **II. LEGAL STANDARD**

14 "[T]he 'cy pres' doctrine allows a court to distribute unclaimed or nondistributable
 15 portions of a class action settlement fund to the 'next best' class of beneficiaries.'" *Lane*
 16 *v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012) (quoting *Nachshin v. AOL, LLC*, 663
 17 F.3d 1034, 1036 (9th Cir. 2011)). "The district court's review of a class action settlement
 18 that calls for a *cy pres* remedy is not substantially different from that of any other class-
 19 action settlement except that the court should not find the settlement fair, adequate, and
 20 reasonable unless the *cy pres* remedy 'account[s] for the nature of the plaintiffs' lawsuit,
 21 the objectives of the underlying statutes, and the interests of the silent class members[.]'"
 22 *Id.* (quoting *Nachshin*). "The court has 'broad discretionary powers in shaping' a *cy pres*
 23 award." *In re Easysaver Rewards Litig.*, 906 F.3d 747,761 (9th Cir. 2018), *cert. denied*
 24 *sub nom. Perryman v. Romero*, 139 S. Ct. 2744 (2019) (citing *Six (6) Mexican Workers v.*
 25 *Ariz. Citrus Growers*, 904 F.2d 1301, 1307 (9th Cir. 1990)).

1 **III. ANALYSIS**

2 **A. Nature of the Lawsuit**

3 This TCPA was brought on behalf of a class claiming that Defendants made
 4 automated calls to their cell phones to collect past due debts. (Compl. ¶ 1, 29–32, ECF No.
 5 1.) Thus, this case touches on both privacy rights and financial literacy.

6 The proposed *cy pres* fund recipients align with these interests. The SCU Privacy
 7 Law Certificate and High Tech Law Institute provide academic and extracurricular
 8 opportunities focused on helping students develop expertise in the area of privacy law, and
 9 the *cy pres* funds will help support the students, faculty, and staff in this endeavor. (*See*
 10 Decl. of Eric Goldman (“Goldman Decl.”) ¶¶ 2–9, 12, ECF No. 123-4.) LISC is a non-
 11 profit corporation in New York that “provid[es] grants, loans, and equity investments and
 12 technical assistance to hundreds of organizations in urban and rural communities
 13 throughout the country.” (Decl. of Maurice A. Jones ¶¶ 2, 4, ECF No. 123-5.) The
 14 organization plans to use *cy pres* funds “to provide employment and career services,
 15 financial education, and credit re-building for low-income borrowers.” (*Id.* ¶ 9.)

16 **B. Objective of the TCPA**

17 “[I]n enacting the TCPA, Congress made specific findings that ‘unrestricted
 18 telemarketing can be an intrusive invasion of privacy’ and are a ‘nuisance.’” *Van Patten*
 19 *v. Vertical Fitness Grp., LLC*, 847 F.3d 1037, 1043 (9th Cir. 2017). As previously stated,
 20 the SCU programs educate law students in privacy law, with the goal of furthering privacy
 21 rights of consumers. The Court finds that the work done by SCU “is directly responsive to
 22 the issues underlying this litigation.” *See Easysaver*, 906 F.3d at 762.

23 Similarly, because the phone calls at issue in this matter were made in furtherance
 24 of debt collection efforts, LISC’s concentration on developing financial stability also
 25 corresponds to the purpose of the statute because improving financial literacy “will benefit
 26 settlement class members by reducing future debt collection calls.” *See In re Midland*
 27 *Credit Mgmt. Inc., Tel. Consumer Prot. Act Litig.*, No. 10-cv-2261-MMA (MDD), 2018
 28 WL 4927982, (S.D. Cal. Oct. 10, 2018) (quotations omitted).

1 **C. Interest of Silent Class Members**

2 Lastly, the Court finds that the interests of silent class members would be advanced
 3 by distributing *cy pres* funds to SCU and LISC. The SCU's programs involve
 4 comprehensive training and education of attorneys regarding the protection and
 5 enforcement of privacy laws. (Goldman Decl. ¶¶ 2–9). The Court therefore agrees that
 6 the funds will be used, as the parties state, "to advance the privacy interests of residential
 7 and cellular telephone subscribers" and "to promote and preserve the privacy rights" of all
 8 class members and consumers at large. (Goldman Decl. ¶¶ 12–18.) LISC targets the
 9 underlying cause of the automated calls in this case: the existence of overdue debt. By
 10 helping individuals develop the skills necessary to keep current on their financial
 11 obligations, LISC reduces the likelihood that class members and, more broadly, any
 12 individuals will be on the receiving end of automated debt collection calls.

13 **IV. CONCLUSION AND ORDER**

14 Having considered the parties' Joint Motion and finding the proposed *cy pres*
 15 beneficiaries appropriate, the Court hereby **GRANTS** the Joint Motion. KCC Class Action
 16 Services, LLC, as the settlement administrator, **IS HEREBY ORDERED** to promptly
 17 distribute the remaining balance in the Cash Component of the Common Fund as a *cy pres*
 18 distribution to the (1) University of Santa Clara Law School's Privacy Law Certificate and
 19 High Tech Law Institute and (2) Local Initiatives Support Corporation, which charitable
 20 organizations shall share equally in the *cy pres* distribution.

21 **IT IS SO ORDERED.**

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 23 **DATED: February 5, 2021**

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Hon. Cynthia Bashant
United States District Judge